

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT G. HANLON

Appeal No. 98-2033
Application 08/507,623¹

ON BRIEF

Before COHEN, MEISTER, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Robert G. Hanlon appeals from the final rejection of claims 1 through 10, all of the claims pending in the

¹ Application for patent filed July 26, 1995.

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application.

The invention relates to "a closure seal for cartons that prevents undetectable entry to the carton's contents"

(specification, page 1). Claim 1 is representative and reads as follows:

1. A tamper-evident closure seal having a top surface and a bottom surface, the bottom surface having an adhesive coating and the top surface having on it a pattern having adjoining high-gloss and matte areas.

The reference relied upon by the examiner as evidence of obviousness is:

Jones, Jr. (Jones)	3,854,581	Dec. 17,
1974		

Claims 1 through 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jones.

Reference is made to the appellant's main and reply briefs (Paper Nos. 7 and 9) and to the examiner's final rejection and answer (Paper Nos. 5 and 8) for the respective positions of the appellant and the examiner with regard to the merits of this rejection. On page 2 in the main brief under

the "Grouping of Claims" heading, the appellant states that "Claims 1-10 stand or fall together." Therefore, and in accordance with 37 CFR § 1.192(c)(7), we shall decide the appeal on the basis of representative claim 1, with claims 2 through 10 standing or falling therewith.

Jones discloses a tamper-indicating label 15 comprising, inter alia, label material 11 composed of a foamed, stretched, uniaxially oriented polyolefin film, a pressure-sensitive adhesive 13 on the bottom surface of the film and ink printing 18 (e.g., the word "CUSTOMS") on the upper surface of the film. Figures 4 and 5 show the label applied to a container as a closure seal. Jones explains that

[t]he foaming and stretching contribute substantially to the high gloss decorative appearance of the film material and provide a telltale indication of tampering if attempted to be removed. As the film is weak in the longitudinal direction it tears easily if attempted to be removed. In addition, as the adhesive resists any attempt to strip the material from the surface of the article to which it is applied, the material wrinkles permanently and noticeably upon being stripped from the surface. Accordingly, the tape or label of the invention is particularly useful as a tamperindicating [sic] device [column 1, lines 30 through 41].

At issue in this appeal is whether Jones teaches, or

would have suggested, a closure seal having on its top surface a pattern having adjoining high-gloss and matte areas as recited in claim 1. The examiner considers that "[t]o form the top surface [of the Jones label] from adjoining high-gloss and matte areas would have been obvious to a skilled artisan" (final rejection, page 2). The appellant, on the other hand, submits that

[t]he closure seal of the present application has on its top surface a pattern having adjoining high-gloss and matte areas. Such a pattern is rendered invisible when covered with a clear, transparent adhesive tape. Thus, if the seal is cut (in order to gain access to a container) and then overlaid with a transparent seal in register with the original seal, the original pattern will not appear, providing evidence of the possibility that there has been access to the container. . . . Thus, unlike Jones, Jr., where the tamper evidence is purely mechanical, the tamper evidence provided by the present closure seal is purely visual. . . . Nowhere does the reference suggest forming on his label any particular pattern (except the word "customs"), let alone a pattern having adjoining high-gloss and matte areas. Moreover, since he makes no use of the pattern for evidence of tampering . . . , there would be no incentive to modify the pattern on his label [main brief, page 3].

From our perspective, the top surface of the Jones label
15 bearing the printed word "CUSTOMS" would have been

suggestive of a pattern having adjoining high-gloss and matte areas as recited in claim 1. More particularly, the word "CUSTOMS" and the surrounding background label material 11 constitute a pattern on the top surface of the label/seal as broadly recited in the claim. Label material 11 has a high-gloss appearance and therefore defines a high-gloss area of the pattern. Although Jones does not expressly describe the ink 18 used to print "CUSTOMS" as exhibiting a "matte" finish, the term "matte" has a relatively broad definition, i.e., "lacking or deprived of luster or gloss" (Webster's New Collegiate Dictionary (G. & C. Merriam Co. 1977)). In our opinion, one of ordinary skill in the art would have found it obvious to use an ink having such a finish on the Jones label for enhanced contrast with the high-gloss background. The appellant's contention that his pattern is rendered invisible when covered with a clear, transparent adhesive tape is not persuasive because it is not commensurate with the rather broad scope of claim 1 which contains no such limitation. In the same vein, claim 1 is devoid of any limitation requiring the tamper-evident aspect of the claimed seal to be purely visual as opposed to mechanical.

For these reasons, the differences between the subject matter recited in claim 1 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Therefore, we shall sustain the standing 35 U.S.C. § 103 rejection of claim 1, and of claims 2 through 10 which stand or fall therewith, as being unpatentable over Jones.²

The decision of the examiner is affirmed; however, since the basic thrust of the affirmance differs from that advanced by the examiner in support of the rejection, we designate the affirmance to be a new ground of rejection under 37 CFR § 1.196(b) in order to provide the appellant with a fair opportunity to react thereto. See In re Kronig, 539 F.2d 1300, 1302, 190 USPQ 425, 426-27 (CCPA 1976).

37 CFR § 1.196(b) provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of

² In the event of further prosecution, both the examiner and the appellant may wish to consider whether the references in dependent claims 2 and 6 to a high-gloss pattern are inconsistent with the definition of the pattern in parent claims 1 and 5 as having both high-gloss and matte areas.

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rejection to avoid termination of proceedings (37 CFR

§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED; 37 CFR § 1.196(b)

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JAMES M. MEISTER)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
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JOHN P. McQUADE)	
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